

LFC Requester:

Lance Chilton

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☒ Amendment ☐
Correction ☐ Substitute ☐

Date February 2, 2016

Bill No: SB 243

Sponsor: Senator William Sharer

Agency Code: 305

Short

Person Writing Jennifer Salazar, AAG

Title: Partial Birth Abortion Ban

Phone: 827-6990 **Email** jsalazar@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to SB 242
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

Section 1 of Senate Bill 243 amends the title of Chapter 30, Article 5A from the "Partial-Birth Abortion Ban Act" to the "Late-Term and Partial-Birth Abortion Ban Act" (hereinafter "Act").

Section 2 defines viability" as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems."

Section 3 and 4 make minor stylistic changes.

Section 5 creates a new section of the Act to prohibit late-term abortions. Section 5(A) defines "late-term abortion" as "knowingly and willfully administering to any pregnant woman any medicine, drug, or other substance, or using any method or mean whereby an ultimate termination of her pregnancy is produced, or attempted to be produced, with the intent to destroy a viable fetus of twenty or more weeks gestational age." Section 5(C) creates a "legal presumption" that viability occurs at the twentieth week of pregnancy. Section 5(D) enumerates a single exception to the late-term prohibition. Specifically, a physician may perform or induce a late-term abortion when it "is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; provided however that the physician shall take all reasonable steps to preserve the life and health of the unborn child."

Section 6 imposes civil penalties on a physician who performs a late-term abortion. Specifically, a physician who performs a late-term abortion in violation of the Act is subject to a civil penalty of not less than \$5,000. In addition, the physician's license "shall be" revoked or suspended for no less than one year. The NM Medical Board and NM Osteopathic Board are mandated to enforce the provisions regarding discipline of the physician's license.

Section 7 is a severability provision that upholds the Act in the event any other provision of the Act is held invalid.

Section 8 makes July 1, 2016, the effective date of SB 243.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This legislation raises constitutional concerns. In Planned Parenthood of Se. Pennsylvania v. Casey, the United States Supreme Court stated a “woman's right to terminate her pregnancy **before** viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce.” 505 U.S. 833, 870-71, 112 S. Ct. 2791, 2816-17 (1992). A state “reach[es] into the heart of the liberty protected by the Due Process Clause” when legislation attempts to impose an “undue burden” on a woman’s ability to terminate or continue her pregnancy before viability. Id.

The Supreme Court has repeatedly held that “the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician.” Isaacson v. Horne, 716 F.3d 1213, 1225 (9th Cir. 2013) (quoting *Colautti*, 439 U.S. at 396, 99 S.Ct. 675). “That is why a state may not fix viability at a specific point in pregnancy.” Id.; see also Jane L. v. Bangerter, 102 F.3d 1112, 1116-17 (10th Cir. 1996) (striking down a Utah law that was intended to prevent nontherapeutic abortions of nonviable fetuses after 20 weeks and finding that the state “made a deliberate decision to disregard controlling Supreme Court precedent set out in *Roe*, *Danforth*, *Colautti*, and *Webster*, and to ignore the Supreme Court's repeated directive that viability is a matter for an attending physician to determine.”). A recent expert medical opinion indicates that a fetus is not viable at 20 and 21 weeks of gestation. See Raju TN, Mercer BM, Burchfield DJ, Joseph GF. Perivable Birth: Executive Summary of a Joint Workshop by the Eunice Kennedy Shriver National Institute of Child Health and Human Development, Society for Maternal-Fetal Medicine, American Academy of Pediatrics, and American College of Obstetricians and Gynecologists. J Perinatol. 2014, 34(5):333–342.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to Senate Bill 242.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The provision under Section 6 that would subject a physician who “knowingly and willfully” violates the Act to a license suspension or revocation may also raise constitutional due process concerns. It is not clear if a physician in violation of this provision would be afforded pre-deprivation procedures before revocation/suspension of his/her license to practice medicine.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A